IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO.2434 OF 1996

Maharashtra General Kamgar Union,
252, Janata Colony,
R.N.Narkar Marg,
Ghatkoper (East),
Bombay-400007 ...Petitioner

Versus

1. M/s. Chloride India Ltd.
D/2 M.I.D.C. Industrial Estate, Chinchwad (East)
Pune-411019

2. Presiding Officer,
First Labour Court,Pune,
(Having his office at
PMP Bldg., First floor
Swargate, Pune-411042 ..Respondents

....

Shri.M.S.Topkar i/b Shri.Kiran Bapat and Shri.Nitin A.Kulkarni for Petitioner.
Shri.P.H.Purav with Shri.V.P.Savant and Ms.A.P.Purav for Respondent No.1.

....

CORAM : B.H.MARLAPALLE,J.

DATE : FEBRUARY 2/3/4, 2005

ORAL JUDGMENT:

1. Being aggrieved by the Award dated 8th April, 1994 (Part-I) and Award dated 7th April, 1995 (Part-II) in Reference (IDA) No.45 of 1989 passed by the Ist Labour Court at Pune, the petitioner which is a registered Trade Union under the Trade Unions Act,

1956, has filed this petition. By the Part-II Award dated 7th April, 1995, the reference made to the Labour Court for the reinstatement of Shri.A.R.Chavan and activist of the said Union came to be dismissed.

2. The workman Shri.Chavan was the member of the petitioner-Union and was also one of the office bearers for sometime. He was working as Job Inspector under respondent no.1. The Management had signed the settlement on 24th July, 1980 with another Trade Union by name Sarvashramik Sanghatana and the said settlement was to remain in force upto 5th February, 1984. However, the petitioner-Union claiming to have formed the majority amongst the workmen of respondent-Management, submitted a charter of demand on 16th January, 1984 for revision of wages and service conditions anticipating expiry of earlier settlement on 5th February, 1984. Some negotiations were held between the parties but without any positive results and consequently, it appears that from 6th April, 1984 onwards, the atmosphere in the factory did not remain normal. The Management alleged that the petitioner-Union through its activists-office bearers had resorted to coercive actions which resulted in loss of production, indiscipline in the factory premises and acts of threats/intimidation against the supervisory as well

as managerial staff. The Management therefore, approached the Industrial Court at Pune in Complaint (ULP) No. 138 of 1984 against the Union and also sought some interim orders. The Industrial Court was pleased to pass an interim injunction order on 18th April 1984 and the Managment had put up a notice for the information of all the workmen to comply with the said order. However, there was no response from the workmen and the Union and therefore, it suspended the factory operations temporarily. It issued a notice of lock-out under the provisions of the MRTU and PULP Act, 1971 on 27th April, 1984 and also demanded a written undertaking from each of the workmen showing their willingness to join the factory and to maintain discipline while on work, before they entered the factory premises. The workmen chose not to furnish these undertakings and therefore, they remained away from their duties. Finally lock out proposed vide notice dated 27th April, 1984 commenced from 27th May, 1984. It was lifted on 1st July, 1984 but the petitioner-Union served a notice of strike on 1st September, 1984 which continued for few months. While the strike continued, the employees of the respondent-Management formed another Union by name Chloride Kamgar Sanghatana which came to be registered on or about 12th February, 1985 and it submitted a joint letter dated 2nd March, 1985 signed

by about 267 workmen (out of 440) that they had resigned from the present petitioner-Union and requested the Management to negotiate with the newly formed Union. The new Union submitted the charter of demand on 4th March, 1985 and with the intervention of the Deputy Commissioner of Labour at Pune, finally settlement came to be signed between the parties on 15th March, 1985. The strike pursuant to the notice dated 1st September, 1984 came to be withdrawn on 14th March, 1985.

3. On the backdrop of these industrial relations prevailing in the factory premises, Shri.Chavan came to be issued with two chargesheets-- (I) on 30th September, 1984 and (II) on 16th July, 1985. He claimed that the first charge-sheet was not served on him at any time, whereas admittedly the second charge-sheet was received by him on 17th July, 1985 and by the said second charge sheet, he was also placed under suspension. The domestic enquiry in respect of the first charge sheet proceeded exparte whereas he had fully participated in the domestic enquiry in respect of the second charge sheet. The Inquiry Officer submitted the first inquiry report on 30th June, 1985 whereas, the report of the Enquiry Officer in the second enquiry, was submitted on 21st March, 1988. Finally, by an order dated 9th May,

1985 the workman was awarded the punishment of dismissal from service. The same was received by him on or about 30th May, 1988. As the Reference (IT) No. 8 of 1985 was pending before the Industrial Tribunal at Pune, an application under Section 33(2)(b) of the Industrial Disputes Act, 1947 for approval was submitted before the said Tribunal and it came to be registered as Approval Application (IT) No.14 of 1988. By its Award dated 2nd April, 1990, the Tribunal was pleased to grant its approval.

4. While the said approval application was pending, the Union approached the conciliation officer with a demand of reinstatement with backwages contending that the order of dismissal dated 9th May, 1988 was illegal, unjust and void ab-initio. The said demand came to be referred for adjudication to the Labour Court in Reference (IDA) No. 45 of 1989. By the first award, on the preliminary point regarding the legality and validity of the domestic enquiry, the Labour Court held that the enquiries conducted against the workmen were legal, fair and proper. In the second Award dated 7th April, 1995, the Labour Court held that acts of misconduct alleged against the workman, were duly proved on the basis of the evidence placed before the Enquiry Officer and on the quantum of punishment, the Labour Court held that it

was commensurate with the nature of charges proved against the workman.

5. Mr.Topkar, the learned counsel for the petitioner-Union in his exhaustive arguments referred to the enquiry proceedings, the Enquiry Officer's findings in both the enquiries and the impugned awards and submitted that the Labour Court fell in gross errors in holding that the enquiry conducted was fair, proper and legal though it was aware that the enquiry was conducted exparte. He further submitted that neither the charge sheet nor any subsequent communications regarding the date of enquiry, were served on the workman and whatever the communications were sent in that regard, were dispatched on wrong address. The workman was thus, denied the basic opportunity of defending the charges and presenting his case before the Enquiry Officer. By referring to the evidence of witnesses, as examined in the exparte enquiry, it was submitted by the learned counsel that the evidence of Mr.Nandre could not have been considered and the testimony of other witnesses was tutored, not corroborated by any other documents like the reports submitted to the Management or FIRs filed with the concerned Police Stations. Almost every witness was a got up witness and their depositions were as per the dictates of the

employer. The evidence of all the witnesses lacked the credibility and could not be believed even on pre-ponderance. The acts of misconducts which were alleged to have been committed in the factory premises, were not proved and the acts of misconducts which were alleged to have taken place outside the factory premises or at the residence of the officers/Managers including the alleged assault on the supervisory staff in the Deccan Gymkhana area of Pune City as well as in Pimpri-Chinchwad, were not corroborated by any independent and plausible evidence. In short, the workman was deliberately framed by levelling false charges as he was an office bearer of the petitioner-Union and the action of the Management of dismissing him from service, was by way of victimisation.

6. Mr.Purav, the learned counsel for the Management on the other hand, has supported the findings recorded by the Enquiry Officer as well as the Labour Court. He submitted that the Management had taken utmost precaution to send the first charge sheet as well as enquiry notices at the address furnished by the workman himself and all these communications were returned by the postman with the remark "incomplete address". He also submitted that the exparte enquiry was not proceeded hastily and it was adjourned on

about 3 to 4 occasions by the Enquiry Officer so as to ensure that all the modes of communications were followed and finally the enquiry notice was published in one of the local Marathi newspapers. So far as the second enquiry is concerned, it has been submitted that the workman had fully participated, he was duly defended by the representative of his choice and all the witnesses of the company were cross-examined on behalf of the workman. As the Labour Court on examination of the evidence considered by the Enquiry Officer, agreed with the findings recorded in the enquiry reports, these findings regarding 'proved acts of misconduct' against the workman, are not required to be disturbed and in fact, there is no case made out for the same. Even in the exparte enquiry, in addition to Mr.Nandre, other witnesses who were the victims, were examined and the Enquiry Officer as well as the Labour Court on assessing their testimony, held that their evidence was sufficient to prove the charges which were serious in nature. It was further submitted that even if one charge of serious misconduct was proved, that by itself, would justify the punishment of dismissal from service and in the instant case, more than one such charges of serious misconducts have been duly proved which did not call for interference under the supervisory jurisdiction

of this Court. The learned counsel further submitted that the witnesses examined by the company were not biased nor was there any allegation that they had any score to settle against the workman or the Union. The evidence of such witnesses was not required to be corroborated by any other evidence either oral or documentary.

. Both the parties have referred to a number of decisions of this Court as well as the Supreme Court, which would be referred to hereinafter.

7. It would be appropriate to reproduce the charges levelled against the workman in both the charge-sheets:

FIRST CHARGE-SHEET

I. That from 6.4.1984 to 25.4.1984, you worked only partially each day for about one hour or two and resorted to illegal sit-in-strike in a similar manner.

II. During the said period, you arranged to put boards/posters with threatening language against Managerial staff of the Company and instigated other workmen to stage threatening/violent demonstration against Management and managerial staff during working hours and within the factory premises.

III. On 15th April, 1984, you organised a meeting within the factory premises during working hours without permission

of the Management ostensibly to celebrate 'Hanuman Jayanti' but with a view to threaten the Management with dire consequences, should your unjustified demands not be considered by the Management.

IV. With effect from 27.4.1984, although you were aware that the Management was ready and willing to allow you to attend for work on your giving an undertaking to work normally and to observe normal rules of discipline,you refused to come for work and thereby continued your participation in illegal strike and instigated other workmen to participate in the said illegal strike in a similar manner.

V. On 6th and 7th August, you along with other workmen numbering 60 visited the places of residence of Mr.P.P.Sharma, Mr.P.K.Chatterjee and mr.U.V.Shenoy (wake them up) and demanded of them that they should not continue to attend to their duty at the factory any more and threatened them and their family members of dire consequences should they neglect the said directives given by you.

VI. On 13.8.1984, you along with a few other workmen obstructed the company's contractor Mr.Palande at Recold corner on Bombay-Pune road and at Pimpri Railway Station at 5.30 p.m. and man-handled him and beat him up because he was attending to his contract work with the factory against your wishes.

VII. You instigated the other workmen to beat the supervisor and Management staff who are attending the factory and refusing to stay away from duty on 5th Sept.. at 6.50 a.m. as per your advice and in your presence your co-workers Mr.S.S.Gogawale, Mr.S.S.Kakade, Mr.B.C.Rajguru and Mr.Kumbharkar caught hold of our supervisors/Management staff Mr.Navala, Mr.Sarode, Mr.Pendharkar near Deccan Gymkhana (Near Natraj Theatre) and at about 7.30 a.m. near H.A.Colony Main Gate caught hold of Mr.M.P.Sethi, Mr.V.T.Abhankar and Mr.C.N.Palekar while

they were proceeding to factory for duty and severely beat them up for their refusal to stay away from duty as per your wishes.

SECOND CHARGE-SHEET

I. On 18.6.85 you along with some other workmen had displayed a notice for the workmen inside factory premises at Canteen Building without permission of the Management alleging therein that some workmen have decided securing signatures of the workmen and appealing to the workmen not to give such signatures.

II. On 14.7.85 at about 20-30 hours. while on duty you left normal work and approached some workmen at about 20.45 hours within factory premises and asked and pressurised them to become member of Maharashtra General Kamgar Sanghatana.

III. You have been generally canvassing amongst the workmen not to increase their production to the targeted level in terms of the spirit of the Settlement dated 15.3.85 to which you are also a party.

IV. You along with some other workmen have displayed placards of Maharashtra General Kamgar Sanghatana inside factory premises without permission of the Management.

8. Though in the first charge-sheet, the specific sub-clauses regarding misconducts under clause 24 of the Model Standing Orders as applicable to the factory, were not set out, the Enquiry Officer in his report dated 30th June, 1994 held that the acts of misconduct under clause nos.24(b)(c)(k)(l)(r) and (w) were duly proved, whereas, in the second report, the

acts of misconduct under clause nos. 24(a)(c)(i)(l)(r) and (w) were held to have been proved.

9. In the case of *Mani Nariman Daruwala and others Vs. Phiroz Nariman Bathena and others AIR 1991 S.C. 1494* while dealing with the powers of High Court under Article 227 of the Constitution of India, it has been noted thus:

> . "In the exercise of this jurisdiction, the High Court can set aside or ignore the findings of facts of an inferior Court or Tribunal if there was no evidence to justify such a conclusion and if no reasonable person could possibly have come to the conclusion which the Court or the Tribunal who has come or in other words, it is a finding which was perverse in law. Except to the limited extent indicated above, the High Court has no jurisdiction to interfere with the findings of facts".

. In the case of *Savita Chemicals Pvt.Ltd. Vs. Dyes and Chemical Workers' Union and Another 1999 (2) S.C.C. 143* on the same issue, it has been held that under Article 227 of the Constitution of India, the High Court could not have set aside any finding reached by the lower authorities where two views were possible and unless those findings were found to be patently bad and suffering from clear errors of law. In the case of *M/s. Essen Deinky Vs. Rajiv Kumar reported in Judgment Today 2002(8) S.C. 471,* the

powers of the High Court under Article 227 of the Constitution of India, have been summarised in the following words:

> . Generally speaking, exercise of jurisdiction under Article 227 of the Constitution of India is limited and restrictive in nature. It is so exercised in the normal circumstances for want of jurisdiction, errors of law, perverse findings and gross violation of natural justice to name a few: It is merely a revisional jurisdiction and does not confer an unlimited authority or prerogative to correct all orders or even wrong decisions made within the limits of the jurisdictions of the Courts below. The finding of fact being within the domain of the inferior Tribunal, except whereas it is a perverse recording thereof or not based on any material whatsoever, resulting in manifest injustice, interference under Article is not called for".

10. In the case of *State of Haryana and another Vs. Ratan Singh reported in SCL J. Vol.V Page 168,* a three Judge Bench of the Supreme Court on the issue of assessment of evidence in a domestic enquiry, has held as under:

> . "It is well settled that in a domestic enquiry, the strict and sophisticated rules of evidence under the Indian Evidence Act, may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence

> provided it has reasonable nexus and credibility. It is true that the departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Evidence Act. The essence of judicial approach is objectivity, exclusion of extraneous material or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached such finding, even though of a domestic Tribunal, cannot be held good".

. On the powers of the Labour Court/Industrial Tribunal to mould the order of punishment under Section 11-A of the Industrial Disputes Act, the guide-lines have been laid down right in the initial stage in the case of *The workmen of Firestone Tyre and Rubber India Ltd. Vs. The Management and others (AIR 1973 SC 1227)*, It has been inter alia held;

. "Even where the dismissal of a workman, by an employer on the ground of misconduct is preceded by a proper and valid domestic enquiry, Section 11-A of the I.D.Act and powers of the Labour Court or the Industrial Tribunal to reappreciate the evidence and examine the correctness of the finding thereat and it further empowers but to interfere with the punishment and alter the same. The mere fact that no enquiry or defective enquiry has been held by the employer, does not by itself render the dismissal of workman

> illegal. The right of the employer to adduce the evidence justifying his action for the first time in such a case, is not taken away by the proviso to Section 11-A. The Tribunal has been empowered to satisfy itself whether the misconduct is proved before the Enquiry Officer or on the basis of the evidence placed before it."

. A Division Bench of this Court in the case of *Municipal Corporation of Greater Bombay Vs. S.E.Phadtare and others reported in 1995 (1) LLJ 70,* has also referred to the wide powers available under Section 11-A of the I.D.Act and reiterated the limits while exercising the powers under Article 227 of the Constitution of India. It held thus:

> . "Writ jurisdiction is to be exercised for correcting obvious injustice and the restraint exercise by this Court while exercising the writ jurisdiction, cannot be treated as a licence for passing any perverse orders by the lower authorities."

. On the issue of victimisation while awarding punishment by the employer, another three Judge Bench in the case of *M/s. Bharat Iron Works Vs. Bhagubai Balubhai Patel and others (SCL J. Vol-8 page 274): A.I.R. 1976 SC 98:1976 (1) SCC 518,* has set out the guide-lines in the following words:

> . "The onus of establishing a plea of

victimisation will be open to the person pleading it. Since a charge of victimisation is a serious matter reflecting to a degree, upon the subjective attitude of the employer evidenced by acts and conduct, these have to be established by safe and sure evidence. Mere allegations, vague suggestions and insinuations are not enough. All particulars of charge brought out, if believed, must be weighed by the Tribunal and a conclusion should be reached on a totality of the evidence produced. Again victimisation must be directly connected with the activities of the concerned employee inevitably leading to the penal action without necessary proof of valid charge against him. The question to be asked: Is the reason for the punishment attributable to gross misconduct about which there is no doubt or to his particular trade union activity which is frowned upon by the employer? To take an example, suppose there is a tense atmosphere prevailing in a company because of a strike consequent upon the raising of certain demands by the Union each party calling the other highly unreasonable or even provocative, the Tribunal will not readily accept the plea of victimisation as answer to a gross misconduct even when an employee, be he an active office bearer of Union commits assault, let us say, upon the Manager, and there is reliable legal evidence to that effect. In such case, the employee found guilty, cannot be equated with a victim or a scapegoat and the plea of victimisation as a defence, will fall flat. This is why once in the opinion of the Tribunal a gross misconduct is established as required, on legal evidence either in a fairly conducted domestic enquiry or before the Tribunal on merits, the plea of victimisation will not carry the case of the employee any further. A proved misconduct is anti-thesis of victimisation as understood in industrial relations. This is not to say that the Tribunal has no

> jurisdiction to interfere with an order of dismissal on proof of victimisation."

. In the case of *Burn & Co. Ltd. Vs. Workman AIR 1959 SC 529,* by referring to the earlier decisions in the case of *State of Orissa Vs. Vidyabhushan Mohapatra, reported in 1963 Suppl.1 SCR 648,* the Supreme Court held that the order of dismissal by way of punishment can be upheld even on one proved charge of misconduct out of a group of charges depending upon seriousness of such single charge. In the case of *M/s. Dalmiya Dadri Cement Ltd. Vs. Murarilal Bikaneria reported in AIR 1971 S.C. 22/1970(3) S.C.C. 259,* one workman was found blowing whistle at the instance of another worker leading to stoppage of work, the Supreme Court held that "such an act of indiscipline could not be tolerated by the employer whatever be the demand for cessation of work".

. The challenge to the impugned Awards at the instance of the Union and the workman, is required to be examined on the touchstone of the legal position summarised hereinabove.

11. Now coming to the first charge-sheet in respect of which the domestic enquiry proceeded exparte, the main argument advanced before the Labour Court and in

this petition as well, has been that the charge-sheeted workman never received either the chargesheet or the enquiry notices dispatched from time to time and this happened on account of the Management sending the notices on the wrong address. The Management falsified these allegations by bringing on record several documents submitted by the delinquent workman himself and one of them was his own letter dated 18th July, 1985 which was his explanation to the second charge-sheet dated 16th July, 1985. The workman's address on the said letter inscribed by himself was:

. "A.R.Chavan,
Rasta Peth,
Opposite Rahatekar
Mandhavwale,
Near K.E.M.Hospital,
Pune - 411011"

. Whereas the charge-sheet as well as enquiry notices were sent on the following address by the Management:

. "A.R.Chavan,
Rasta Peth,
Opposite Rahalkar
Mandhavwale,
Near K.E.M.Hospital,
Pune - 411011"

. The difference between the two addresses was

‘Rahalkar Mandavwale’ and ‘Rahatekar Mandavwale’ and it could not have made out a case for incomplete address per se.

. It is seen from the record that the charge-sheet as well the enquiry notices dispatched on 5th November, 1984, 20th November, 1984 and 10th December, 1984 were returned by the postman concerned, with the standard remark "incomplete address". It was under these circumstances that the Labour Court observed that the workman had managed to ensure that none of these communications would be served on him. It is also required to be noted that the Enquiry Officer did not act in haste and adjourned the enquiry on four occasions. He had finally insisted that the workman be communicated regarding the next date of enquiry i.e. 28th December, 1984 by publishing the same in a local newspaper and it was so done by publication on 27th December, 1984. Neither the Union nor the workman took cognizance of the said public notice as well. The findings of the Labour Court that the enquiry was neither vitiated nor had it suffered on the ground that it was conducted exparte, are well reasoned. Even before the Labour Court after the preliminary point was decided, no steps appeared to have been taken by the Union to apply for leave to

cross-examine the witnesses who were examined in the exparte enquiry conducted by the Enquiry Officer and therefore, the Labour Court had no alternative but to take into consideration the veracity of the findings as well as the weightage to the reasoning thereof given by the Enquiry Officer in his report and examined the same on the basis of the actual depositions recorded in the domestic enquiry. Even no application was submitted before the Labour Court by the workman for leave to adduce additional evidence in support of his case.

12. In the domestic enquiry into the charge sheet dated 30th September, 1984, the witnesses examined by the Management were:(1) Mr.S.N.Nandre, (2) Mr.V.M.Sarode- Supervisor in Production Department, (3) Mr.M.P.Sethi-Supervisor in Production Department, (4) Mr.P.K.Chaterjee-Manager (Accounts), (5) Mr.S.A. Palande- Contractor, (6) Mr.P.P.Sharma- Assistant Manager (Accounts) and (7) Mr.U.V.Shenoy- Manager (Engineering).

. The learned counsel for the petitioner-Union has pointed out that Mr.Nandre had acted as the Presenting Officer in the said enquiry and therefore, he could not have been the prosecution witness. In support of these contentions, reliance has been

placed on a Division Bench decision of this Court in the case of *Kumar Ramnandan Vs.M/s. Fluid Power Pvt.Ltd. and others, C.L.R. (2), 1987 Page 269*, It is clear that Mr.Nandre had acted as the Presenting Officer and being the Prosecutor, he could not have been allowed to step in the shoes of prosecution witness. But on that count alone, the enquiry cannot be held to be vitiated and the findings of the Enquiry Officer will have to be assessed on the basis of the evidence that came through other witnesses. It would be, therefore, safe to discard the depositions of Mr.Nandre so as to assess whether all or any of the charges levelled against the workman in the charge-sheet dated 30th September, 1984, were proved.

13. The first charge was regarding inciting the workmen to resort to an illegal sit-in-strike or to work partially each day between 6.4.1984 to 25.4.1984. The first witness to be considered in this regard would be Mr. V.M.Sarode, who was the Supervisor in the Production Department. In his depositions before the Enquiry Officer, he stated that from 6.4.1984 workers suddenly resorted to tool down strike without prior intimation. Tool down strike continued upto 25.4.1984 and the charge-sheeted workman Shri.Chavan along with his

other colleagues Shri.Kumbharkar, Shri.Kakade etc. supported the workmen to resort to tool down and they also threatened the workmen as well as the supervisory staff including the witness himself. The second witness was Mr.Mahendra Sethi. He reiterated the statement made by Mr.Sarode verbatum. There is no third witness on this charge. It is evident that the charge of inciting the workman to tool down strike from 6.4.1984 to 25.4.1984, has not been supported by the testimony of these two witnesses and the charge regarding the threats hurled against the supervisory staff was not set out in the charge-sheet. It will have to be therefore, held that the first charge levelled against Mr.Chavan was not proved.

. The second charge was regarding displaying boards/posters with threatening language against the managerial staff of the company and instigation to other workmen to stage threatening/violent demonstration against the Management and managerial staff during the working hours within the factory premises. Through the evidence of Mr.Sarode, nothing in support of this charge has come on record before the Enquiry officer and the same is the case of the evidence of Mr.Mahendra Sethi as well as Mr.P.K.Chaterjee and Mr.Shenoy and therefore, this

charge also could not be proved.

. The third charge was regarding the incidents that had taken place on 15.4.1984 i.e. organising the meeting within the factory premises during the working hours and without permission of the Management ostensibly to celebrate ‘Hanuman Jayanti’ but with a view to threaten the Management with dire consequences, should the unjustified demands be not considered by the Management. The first witness Mr.Sarode in his depositions stated that on 15.4.1984 the workers’ leaders arranged a meeting of the workers in the factory premises without permission of the Management and they gave lectures when ‘Hanuman Jayanti’ was celebrated and they challenged the Managment. The second witness Mr.Sethi in verbatim repeated the deposition of the first witness on the third charge. Mr.Sharma did not say anything on this charge and so was the case with Mr.Chaterjee and Mr.Shenoy. The allegation was that the meeting was arranged to threaten the Managment with dire consequences in case their demands were not considered by the Management. The evidence shows that the leaders addressed a meeting during the working hours but the next part of the charge regarding threats to the Management of dire consequences, is not established.

. The 4th charge was regarding the incident on 27th April, 1984 when the Managment put up a notice and called upon the workmen to furnish Undertaking in writing and in the prescribed format before they were allowed to enter the factory premises. It was alleged that by not furnishing the Undertaking the charge-sheeted workman participated and continued in an illegal strike and he instigated the other workmen to participate in the said illegal strike. The instigation part of it, has not been proved in the depositions of any of the witnesses examined by the Management before the Enquiry Officer and it is admitted that a vast majority of the workmen stayed away from work by refusing to furnish the undertaking. The seriousness of this charge was obviously more on the aspect of instigation of illegal strike and there was no material in support thereof placed before the Enquiry Officer.

14. The 5th charge was regarding the incidents of holding demonstrations in front of the residential premises of the managerial staff or visiting residential premises and threatening them not to attend to their duty. The charge also embodied threats to the family members in case the managerial staff attended the factory duty. The Officers named

in the charge sheet were Mr.P.K.Sharma, Mr.Chaterjee and Mr.Shenoy. Mr.Sharma in his depositions stated that he was employed under the said Management for about 14 years and at the relevant time, he was working as an Assistant Manager (Accounts). He knew the chargesheeted workman Shri.Chavan who was employed as Job Inspector. He further stated that he was staying at Chinchwad area and on 6.8.1984 at about 11 p.m. a mob of about 40 to 60 persons started shouting in front of his house and as a result, he had woken up. When he came out, he saw that the mob was of the workers working in the factory and they were shouting and hurling abuses as well as threats. In the said mob, he saw Shri.Chavan, Shri.Kumbharkar and Shri.Kakade etc. who were inciting the other workers to shout. Mr.Chaterjee in his depositions stated that he knew the charge-sheeted workman as he was working in the factory for eight years as Accounts Manager. He was staying near Chatushringi and in a company leased flat. At about 11 p.m. on 7.8.1984, he heard loud shouts and therefore, he had woken up and come out of his house. In the street light, he noticed that about 50-60 workers from his company, had assembled in front of his house and Shri.Chavan, Shri.Kakade and Shri.Kumbharkar were the leaders who were shouting. He tried to talk to them. They were

shouting and telling him that if he went to the factory for work, he would be assaulted in the factory and his hands/legs would be broken. The mob left after about 10 to 15 minutes. Next day, he had reported the matter to the company. The third witness Mr.Shenoy stated that he knew Shri.Chavan. He was staying in Bhosale Nagar area and on 7.4.1984 at about 11.45 p.m. he heard loud shouts in his name and was therefore, woken up. He peeped through the window and noticed, in the street lights, that Shri.Chavan, Shri.Kumbharkar and Shri.Kakade and other Union leaders along with 50 to 60 workers from the factory, had assembled there. A mob was abusing and threatening him if he reported for duty in the factory. In about 10 to 15 minutes time they left the place after creating a nuisance. On the next day, he had reported the matter to the concerned officers in the company. In the evidence of Mr.Sharma, it is proved that a mob of 40 to 60 workers had visited his house on 6.8.1984 at about 11 p.m. and hurled shouts, abuses and threats but these threats or abuses were not attributed either to the charge-sheeted workman Shri.Chavan or any other leader. Mr.Sharma only stated that Shri.Chavan and other 2 to 3 leaders were inciting the other workmen present there to raise shouts. In the evidence of Mr.Chaterjee, the threats of assault, if he reported

for work were clearly disclosed but he did not state that these threats were given by Shri.Chavan nor did he state that Shri.Chavan had incited to hurl such threats. But Shri.Chavan was one of the participants in the said shouts and nuisance. In the evidence of Mr.Shenoy, he stated that along with 50 to 60 workers, he had seen Shri.Chavan, Shri.Kumbharkar and Shri.Kakade and the entire mob was abusing and threatening him to the effect that if he reported for duty on the next day, he would be assaulted. The evidence of these three witnesses has unambiguously proved that a group of workers went to the house of Mr.Sharma on 6.8.1984 at 11 p.m. and abused and threatened him not to report for duty in the factory. Similarly, Mr.Chaterjee was threatened on 7.8.1984 and he was specifically told that if he reported for factory work, he would be assaulted and his hands/legs would be broken. Mr.Shenoy also reiterated the same threats. The fact that Shri.Chavan was a member of the mob shouting slogans and hurled abuses and threats, is proved. In the evidence of Mr.Chaterjee, it has clearly come out that he was threatened of harm to be caused to his family members. Thus, the charge no.5 has been duly proved.

15. The incident of 13.8.1984 was regarding the

alleged assault/manhandling of the company's contractor Mr.Palande at about 4.30 p.m., firstly at a place near the Recold corner on the Bombay-Pune Road and subsequently at the Pimpri Railway Station on the purported ground that he was attending to his contract work with the factory against the wishes of the petitioner-Union. In support of this charge, Mr.Palande has been examined before the Enquiry Officer. He stated that he was engaged as a contractor for fabrication contract for the last about one and half years and therefore, he was required to visit the factory regularly. He was knowing Shri.Chavan, Job Inspector. He further stated that on 13.8.1984 at 5.30 p.m. Shri.Chavan and other workers stopped him near the Recold corner on the Bombay-Pune road at about 5.30 p.m. and threatened him on the reasons that he was attending the contract work though the petitioner-Union had resorted to strike. He also stated that he was assaulted, and he managed to escape and run away to the Pimpri Railway Station. He was chased by Mr.Chavan and others and was abused and beaten. He had filed complaint with the police as well as with the Management in that regard. However, the copies of such complaints were not placed on record. Both the incidents involving the alleged assault or threats had admittedly taken place outside the

factory premises of the Managment and on public places. Mr.Palande was a contractor and was knowing Mr.Chavan. The learned counsel for the petitioner submitted that the testimony of Mr.Palande in isolation cannot be relied upon even for pre-ponderance of probabilities regarding the incidents alleged by Mr.Palande. In support of this contention, he has placed on record a copy of the judgment rendered in Criminal Case No. 1828 of 1989. This complaint was initiated by the police on account of the FIR filed by one Anand Deshpande who was helper under Mr.Palande and it was stated that the complainant was assaulted when Mr.Palande was in his company bus on the public road on 13.8.1984. During the trial, Mr.Chavan and Mr.Shivaji Kakade were also charged as accused. Amongst the witnesses examined, Mr.Nandre, Personnel Officer of the Company was the witness and before the Court he stated on oath that the contract workers were travelling in the bus in which he was also travelling and when Mr.Deshpande and Mr.Palande had got down to go to their respective places, they were attacked by a mob of 8 to 10 workers near the Recold factory but in the said mob, Mr.Chavan and Mr.Kakade were not seen by him. If the charge as levelled against Mr.Chavan regarding the incidents of 13.8.1984 is read in totality, there is continuity of incidents and the second incident at

the Railway Station was said to be an extension of the first incident. The evidence of Mr.Nandre as recorded by the learned Magistrate clearly showed that the presence of Mr.Chavan and Mr.Kakade was not accepted by the witness. Though this was a criminal trial wanting strict proof but on the face of this testimony, it would not be safe to believe, even on probabilities, the evidence of Mr.Palande unless it was supported by some other document like complaints which he claimed to have submitted to the Management as well as to the Police, more so, when the enquiry was exparte. The incident was not in the vicinity of the factory premises or in the factory premises or at the residence of any of its officers and therefore, the Management was required to do something more than merely examining Mr.Palande before the Enquiry Officer. It will have, therefore, to be held that this charge was not proved.

16. Now coming to the incidents of assault on the supervisory staff on 5.9.1984, it was alleged that two separate incidents had taken place, first was at 6.50 a.m. near Deccan Gymkhana (Near Natraj theatre) in which Mr.Chougule, Mr.Kakade, Mr.D.C.Rajguru and Mr.Kumbharkar on the advice of Mr.Chavan, had assaulted the three supervisory staff members viz. Mr.Navale, Mr.Sarode and Mr.Pendharkar while they

were waiting to go to the factory by bus, and they were severely beaten up on account of their refusal to stay away from duty as per the wishes of Mr.Chavan. From the first group of the supervisory staff, Mr.Sarode was examined as witness and from the second group, Mr.Sethi was examined as a witness.

. In his deposition, Mr.Sarode stated that at about 6.50 a.m. on 5.9.1984, he was waiting along with Mr.Pendharkar and Navale for the company Bus near Natraj theatre, and at that time, Mr.Chavan, Mr.Gogavale, Mr.Kakade, Mr.Rajguru and Mr.Kumbharkar gheraoed them and threatened and assaulted them because they were going for factory duty against their instructions. The complaint in this regard was filed with the Deccan Gymkhana Police Station. As a result of the assault, he had sustained bleeding injuries on his face, head and back as well as hands. His lips were broken and therefore, he was admitted in Rubi Hospital. Discharge Card at Exhibit-19 was placed on record. This witness has not specifically stated as to who beat whom and it appears that all the three supervisory staff were attacked by the five named workmen including Mr.Chavan. The Discharge Card issued by Pune Medical Hospital (Rubi Hall Clinic) at Exhibit-19 indicated that Shri.Sarode was admitted on 5.9.1984 and was discharged on 6.9.1984

from the said hospital. The injuries noted in the said certificate were "multiple abrasions, left black eye" and the diagnosis was ‘traumatic injuries’ on account of "alleged beating". This document proved assault on Mr.Sarode on 5.9.1984. It was also proved that Mr.Chavan was one of the members of the gang which attacked the said supervisors.

. Then comes the evidence of Mr.Sethi before the Enquiry Officer. He stated that at about 7.30 a.m. on 5.9.1984 when he was proceeding to the factory along with Mr.Abhyankar and Mr.Palekar, they were stopped near the Hindustan Antibiotics Colony Gate by Mr.Chavan, Mr.Kakade, Mr.Gogavale, Mr.Rajguru and Mr.Kumbharkar and were threatened, abused and beaten. They received fist blows at the hands of these workmen. The reason for the said incident was that the supervisors were attending to their duties when the workers were on strike. They had filed complaint with the Police Station as well as with the Management. No Medical Certificate in support of the injuries allegedly received by any of the supervisory staff, was brought on record. The first incident of the assault was reported at 6.50 a.m. near Deccan Gymkhana and the second incident was reported at 7.30 a.m. near the H.A.Colony main gate at the hands of the same workers. From Deccan Gymkhana to the

H.A.Colony gate, it was easily possible to cover the distance even by a private vehicles within forty minutes and therefore, on probabilities, this incident cannot be ruled out. Mr.Sethi made it clear that he was not on inimical terms with any of these workers and there did not appear to be any other reason to believe that Mr.Sethi was deliberately trying to rope them in. The second incident also appears to be a continuity of the first one and probably, because no bleeding injuries were sustained, Mr.Sethi was not hospitalised. The evidence of Mr.Sarode and Mr.Sethi thus proved the charge regarding attack on the supervisory staff near Deccan Gymkhana area as well as the H.A.Colony main gate on 5.9.1984.

17. I preferred to examine the evidence of each witness independent of the findings recorded by the Enquiry Officer as well as the Labour Court solely for the reasons that the first enquiry was conducted exparte and it was not an exercise of reappreciating the evidence. Two charges pertaining to the incidents of 6th and 7th August, 1984 and 5th September, 1984, have been undoubtedly proved against Mr.Chavan.

. Clause 24 of the Model Standing Orders as

applicable to the chargesheeted workman, has listed the various acts of misconduct. Sub-clause (l) of clause 24 which are relevant, read as under:

. "(l) Commission of any act subversive of discipline or good behaviour on the premises of establishment"

. So far as the first charge-sheet is concerned, the above mentioned charge has been duly proved against Shri.Chavan.

18. Now coming to the second charge-sheet dated 15.7.1985, as noted earlier, the workman had fully participated in the same. The witnesses examined excluding Mr.Nandre, are Mr.U.V.Shenoy and Mr.Deokule. The depositions of these witnesses as recorded before the Enquiry Officer and considered by the Labour Court go to show that the charges nos. 3 and 4 have been duly proved i.e. canvassing among the workmen not to increase the production to the targeted level in terms of the spirit of the settlement dated 15th March, 1985 and displaying of placards of the Maharashtra General Kamgar Sanghatana inside the factory premises without permission of the Management. The charge of displaying notice in the canteen building without permission of the Management

at Exhibit-17, has also been supported. Having regards to the depositions of these two witnesses, there is no case made out to hold that the findings recorded by the Labour Court regarding these three charges are perverse or contrary to evidence. Displaying notices in the factory premises without permission of the Management would certainly be disorderly behaviour. Distributing or exhibiting within the premises of the establishment hand-bills, pamphlets, posters is an act of misconduct under clause 24(w) of the Model Standing Orders.

19. The order of dismissal which was the subject matter of challenge in the Reference adjudicated by the Labour Court, was on the basis of two charge sheets referred to hereinabove. The charges which have been held to have been proved, as recorded hereinabove, are of serious nature and the instances of assault on the supervisory staff, managerial staff and shouting slogans and creating nuisance in front of the residential premises of these officers,threats to the officers and their family members, are very serious acts of misconduct which on their own would warrant an extreme punishment provided under the Standing Orders. Mr.Topkar, the learned counsel for the petitioner submitted that the Enquiry Report of the first charge sheet was submitted on 30th June,

1985 but the dismissal order was issued almost three years later. The explanation given by the Management in this regard is that the enquiry report was received sometime in the first week of July, 1985 and the second charge sheet was issued on 15th July,1985. While issuing the second charge sheet, the workman was placed under suspension. It was under these circumstances that the Management thought it appropriate to wait for the report of the second enquiry as well. This explanation furnished by the Management does not vitiate its action of dismissal on the basis of combined charge-sheets. At the backdrop of the prevailing industrial relations situation during the relevant time, and more particularly, the tense atmosphere and the hostility between the parties, the allegation of victimisation in issuing the dismissal order is unsustainable. The Labour Court has considered the issue of quantum of punishment and held that it could not be said to be grossly disproportionate so as to interfere with the same. Though in this judgment, some of the findings of the Labour Court regarding the charges in the first charge sheet, have not been accepted, nevertheless, the proved charges, on their own would fully support the punishment of dismissal from service.

20. Reference also must be made to the order passed by the Industrial Tribunal in the approval application. On hearing the parties concerned and after going through the enquiry proceedings, the Tribunal thought it fit to approve the order of dismissal. This order would also support the findings of the Labour Court that the enquiries were conducted in fair and proper manner and they were not vitiated on any count.

21. In the result, the challenge to the awards passed by the Labour Court, fails and the punishment as ordered by the Management requires to be upheld. Petition is therefore, dismissed. Rule discharged with no order as to costs.

[B.H.MARLAPALLE,J.]